

18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

125 MAINE REVENUE SERVICES

Chapter 207: CONTROLLING INTEREST TRANSFERS

SUMMARY: This rule explains Maine law on the application of the real estate transfer tax under 36 M.R.S., chapter 711-A to the transfer or acquisition of a controlling interest in an entity that owns real property located in Maine.

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.01 General

Maine generally imposes a real estate transfer tax on the transfer of Maine real property from one person to another. The real estate transfer tax is also imposed on the transfer or acquisition within a 12-month period of a direct or indirect controlling interest of an entity with a fee interest in Maine real property.

.02 Definitions

- A. Consideration.** “Consideration,” as defined in 36 M.R.S. § 4641(1), means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise and includes the amount of any mortgages, liens or encumbrances thereon, regardless of whether the underlying indebtedness is assumed by the grantee.
- B. Controlling interest.** “Controlling interest,” as defined in 36 M.R.S. § 4641(1-A), means the following:
 - 1. In the case of a corporation, “controlling interest” means more than 50% of the total combined voting power of all classes of stock of the corporation entitled to vote or more than 50% of the capital, profits or beneficial interest in the voting stock of the corporation.
 - 2. In the case of a partnership, association, trust or other entity, “controlling interest” means more than 50% of the capital, profits or beneficial interest in the partnership, association, trust or other entity.

- C. Entity.** “Entity” means an organization that has a legal identity that is separate from the individual members or owners of that organization. Examples of entities include, but are not limited to, partnerships, corporations, associations, and trusts.
- D. Indirect controlling interest.** “Indirect controlling interest” means the ultimate controlling interest in an entity through the direct controlling interest of an intermediary entity or entities.
- E. Market value.** “Market value” means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller for a property, each acting without compulsion in an arm’s-length transaction.
- F. Person.** “Person,” as defined in 36 M.R.S. § 111(3), means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.
- G. Return.** “Return” means the combined Controlling Interest Transfer Tax Return/Declaration of Value form furnished by or approved by Maine Revenue Services (“MRS”).
- H. Value.** “Value,” as defined in 36 M.R.S. § 4641(3), means either (1) the actual consideration paid for the fee interest in the real property, or (2) the market value of the fee interest in real property when the entity has been transferred by gift or with nominal consideration or without stated consideration, or when the consideration for the real property cannot be determined. “Nominal consideration” means less than 20% of the property’s most recently locally assessed value as adjusted by the municipality’s or unorganized territory’s certified assessment ratio, unless the taxpayer provides an attestation from the local assessor that the most recent locally assessed value does not reflect market value.

.03 Controlling interest transfers

- A.** A controlling interest transfer occurs when a person, or a group of persons acting in concert, transfers or acquires more than a 50% interest in an entity that owns real property in Maine within a 12-month period. When such a transfer occurs, there is ordinarily no deed to convey title to the real property owned by the transferred entity because the real property owned by the entity being transferred is not being sold directly. Instead, the ownership of the entity itself is being transferred. The real estate transfer tax is imposed equally on the transferor and transferee based on the value of the transferred portion of the real property. For example, within a 12-month period, Company A acquires from an unrelated individual a 75% interest in Company B, which owns a warehouse in Maine. If the value of the Maine warehouse at the time of the final transfer is \$1,000,000, the real estate transfer tax is imposed on the portion of Company B that is being transferred (75%) multiplied by the value of Maine real property owned by Company B (\$1,000,000), or \$750,000. The real estate transfer tax is imposed half on the transferor (the individual seller) and half on the transferee (Company A).
- B.** All acquisitions involving persons acting in concert must be aggregated to determine if a controlling interest has been transferred. Factors relevant in determining whether two or more persons are acting in concert include but are not limited to the following:

1. **Common ownership.** Persons are treated as acting in concert if they have a relationship with each other such that one person influences or controls the actions of another through common ownership. For example, if a parent corporation and its wholly-owned subsidiary each purchase a 30% interest in Company A, the parent corporation and its wholly-owned subsidiary are treated as acting in concert in acquiring a controlling interest (60% total) in Company A.
 2. **Unity.** For situations when common ownership or control is not present, persons will be treated as acting in concert only if the unity with which the purchasers have negotiated and will consummate the transfer of ownership interest supports a finding that they are acting as a single entity. For example, if three partnerships, which are neither commonly owned nor controlled, each purchase a 20% interest in Company A (60% total) as part of a collective negotiation to acquire a controlling interest in Company A, the unity with which the three partnerships acted will support a finding that they are acting as a single entity. If, however, the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, the acquisitions must be considered separate acquisitions.
 3. **Other factors.** Other factors to be considered in determining whether persons are acting in concert include, without limitation, the following:
 - a. The timing of the separate transfers or acquisitions of interests in an entity;
 - b. Contractual terms indicating unity;
 - c. Agreements between the purchasers that bind them to a course of action with respect to the transfer or acquisition; and
 - d. The number of purchasers; or
 - e. The nature of relationships (e.g., close personal or family relationships).
- C. All transfers within a 12-month period by persons acting in concert are aggregated for the purpose of determining whether a controlling interest transfer has taken place.

.04 Tax

- A. The real estate transfer tax rate is \$2.20 for each \$500 or fractional part of \$500 of the value of Maine real property transferred. Half of the real estate transfer tax is imposed on the transferor(s) and half is imposed on the transferee(s). The real estate transfer tax is adjusted by the percentage of interest transferred. For example, if a 75% interest in an entity owning Maine real property is transferred, the real estate transfer tax will be based on 75% of the value of the real property transferred.
- B. If the real estate transfer tax is based on the market value of the real property, rather than the actual consideration paid, the reported value is subject to review by MRS. In determining whether the reported market value is reasonable, MRS may consider any or all of the following:

1. A recent appraisal of the property;
 2. An allocation of assets by the grantor or the grantee made pursuant to section 1060 of the Internal Revenue Code and reported to the Internal Revenue Service;
 3. The equalized value of the property based on the municipal property tax rolls on the date of sale. "Equalized value" means the value assessed by the municipality for property tax purposes adjusted to market value by MRS; and
 4. Other evidence that the transferor or transferee may present to prove market value of the property.
- C. A controlling interest transfer must be reported to the register of deeds in the county or counties in which the real property in question is located as described in section .05 below.

.05 Tax return and payment

- A. Controlling interest transfers are reported on the Controlling Interest Transfer Tax Return/ Declaration of Value. The return must be completed and submitted to the county or counties in which the transferred real property is located within 30 days of the date of the transfer.
- B. In cases where a controlling interest transfer occurs as the result of a series of separate transfers involving persons acting in concert, the return must be submitted within 30 days of the date of the final transfer. The parties responsible for submitting the return in this situation are the transferor and transferee of the final transfer. The parties to the final transfer must also complete pro forma returns on behalf of the parties to any other transfer contributing to the controlling interest transfer for which returns have not been filed.
- C. If the controlling interest transfer is not reported to the register of deeds in the county or counties in which the property is located and the tax is not paid within 30 days of the completion of the transfer, the transferor and the transferee are jointly and severally liable for the full amount due, plus applicable interest and penalties. Any party to a controlling interest transfer that has timely reported the transfer to the appropriate register of deeds and timely paid that party's share of the tax is not liable for tax due from another party.
- D. When the controlling interest is transferred in an entity that holds Maine real property located in more than one county, the real estate transfer tax must be divided among the counties in the same proportion in which the value of the real property is distributed among the different counties. Any dispute between counties as to the proper amount of real estate transfer tax due to each county as a result of a particular transfer will be decided by MRS on written petition from an official authorized to act on behalf of an aggrieved county.

.06 Exemptions

A controlling interest transfer is exempt from the real estate transfer tax if the transfer would have qualified for exemption if conveyed with a deed. See 36 M.R.S. § 4641-C for a description of exemptions. Any such exemption must be claimed and identified on the return.

STATUTORY AUTHORITY: 36 M.R.S. §§ 4641(1-A)(C) and 4641-E

EFFECTIVE DATE:

September 21, 1987 - filing 87-330

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 1, 1996

REPEALED AND REPLACED:

January 12, 2003 - filing 2003-4

AMENDED:

January 16, 2007 – filing 2007-7

January 7, 2008 – filing 2008-2

REPEALED AND REPLACED:

August 24, 2022 – filing 2022-153